IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 301 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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RALIYATBAN MOHANBHAI SAVLIA & 1 - Appellant(s)
Versus
MANHARBHAI CHAGANLAL HIRANI & 9 - Defendant(s)

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Appearance :

NOTICE SERVED for Appellant(s) : 1,MR HA RAICHURA for Appellant(s) : 1 - 2.MR MB PARIKH for Appellant(s) : 2,
MR JD AJMERA for Defendant(s) : 1,
MR PS PATEL for Defendant(s) : 2,
MR HJ BHATT for Defendant(s) : 3,
NOTICE SERVED for Defendant(s) : 4 - 10.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/07/2006

ORAL JUDGMENT

1. By way of this appeal the appellants have challenged the judgement and order dated 8th August 1989 passed by M.A.C. Tribunal, Amreli in M.A.C.P. No. 62 of 1984 whereby the said claim petition was dismissed due to death of the appellant.

2. The short facts of the case are that there was an accident on 24.05.84 at 7.30 a.m. the tar road at

padar of village Rajeshtali. The accident took place on account of the negligence and careless driving of Motor Vehicle Tempo bearing Registration No. GTS 7035 by opponent No. 1 Manharbhai Hirani. The opponent No. 2 being the owner of the aforesaid motor vehicle was also responsible for the aforesaid accident. The owner and insurer were not joined as parties when this claim petition was filed because the claimant was not knowing their names. The deceased who died during the pendancy of these proceedings, on account of the injuries which he had sustained in the motor accident, had filed the claim petition claiming Rs. 70,000/- by way of compensation. Tribunal awarded Rs. 29,400/- by way of compensation. However, since the appellant has expired the Tribunal dismissed the claim petition.

4. Learned advocate for the appellant has submitted that Tribunal has erred in dismissing the claim petition on the ground that initially claim application was filed by Claimant Mohanbhai Khodabhai for injuries caused in the accident. It is submitted that during the pendency of the claim application the claimant died on 27.10.1988 and hence his heirs were brought on record.

4. Mr. Parikh, learned advocate for the appellant has relied upon the decision of this Court in the case of ***Jenabai and others reported in 1991 ACJ page No. 585*** wherein it is held that whether the claim for compensation would abate in toto and whether the legal representatives shall have the right to continue the action for compensation in so far as it relates to loss to the estate of the deceased and held in the negative. It is held that "legal representatives shall have the right to continue the action for compensation in so far as it relates to loss to the estate of the deceased." Next he produced the decision of this Court in the case of ***Gujarat State Road Transport Corporation Vs. Amishkumar Vinodbhai and ors. Reported in 1996 GLR page 212,*** wherein it is held that since the aim of award of damages is to compensate the person wronged there is no reason why measure of damages pertaining to estate should be in any way affected or limited by the death of the original victim of the accident. The maxim "actio personalis moritur cum persona" is considerably abrogated by the judicial pronouncements. The scope of the provisions of Sec. 306 of the Succession Act and the maxim "actio personalis moritur cum persona" appears to be well settled and the claim of damages on account of

loss to the estate of the injured would not abate on his death. The claim regarding loss caused to the estate would include several items such as medical expenses, miscellaneous expenses, actual loss of income from the date of injuries till the death of the injured etc. but for the injuries sustained, the injured would not have been required to incur the said expenses nor would have suffered actual loss of income. Therefore, even after the death of the injured the claim petition does not abate and the right to sue survives to his heirs and legal representatives.

5. Heard learned counsel for the parties and have gone through the documents placed on record. The Tribunal has committed an error in rejecting the claim of the appellant. It is an admitted position that the legal heirs were brought on record of the case. As per the settled law even after the death of the injured the claim petition does not abate and the right to sue survivors to his heirs and legal representatives.

However nothing is pointed out to show that the compensation determined by the Tribunal is inadequate.

6. Therefore, the impugned order requires to be

quashed. The present claimants original appellants shall be entitled to get ***Rs. 29,400/-*** as held by the Tribunal.

7. Appeal is allowed to the aforesaid extent. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*